Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re Master Isidoro Rodriguez-Hazbun,
Petitioner.

To the Respondents: The Judges of the Supreme Court of Virginia; The Judges of Court of Appeals of Virginia; Judges of the Fairfax County Circuit Court; The Judges of the Fairfax County Juvenile & Domestic Relations District Court; The Judges of the U. S. Court of Appeals for the District of Columbia Circuit; The Hon. Judge Richard W. Roberts, U. S. Dist. Ct. D.C. ; The U. S. Department of State; and its contractor, The National Center for Missing and Exploited Children.

PETITION FOR EXPEDITED WRIT OF MANDAMUS AND PROHIBITION PURSUANT TO ARTICLE 2, 11, & CHAPTER IV OF THE HAGUE CONVENTION; ICARA; AND CONGRESSIONAL RESOLUTION 293.

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Since January 27, 2003, the record of the past 616 days confirms Respondents' use of unauthorized polices and practices that violate their judicial and ministerial authority and duties mandated by Congress to expeditiously secure Petitioner's international right of visitation with his father pursuant to Articles 2, 11, and Chapter IV of the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980; the provisions of The International Child Abduction Remedies Act 42 U.S.C. § 11601 *et seq.*; and House Concurrent Joint Resolution 293, May 23, 2000. Thus, Respondents' duties are "clear and indisputable." However, Respondents' have intentionally disregarded the law, making no other alternative remedies available to Petitioner to secure his right prior to the end of the effective date of the Treaty upon his 16th birthday on March 10, 2005. Thus, to secure compliance with the law by these government entities, and instrumentality, a Writ of Mandamus and Prohibition must be issued.

QUESTION PRESENTED FOR REVIEW

I. WHETHER A WRIT OF MANDAMUS AND PROHIBITION MUST BE ISSUED TO COMPEL RESPONDENTS TO CEASE AND DESIST THEIR POLICIES AND ACTIONS DISREGARDING THE TREATY AND FEDERAL LAW--SO TO COMPEL THEIR EXPEDITIOUS SECURING OF THE PETITIONER'S INTERNATIONAL RIGHT OF VISITATION WITH HIS FATHER IN THE UNITED STATES FOR HIS 2004 CHRISTMAS VACATION TO BEGIN IN 70 DAYS, AS WELL AS HIS VACATIONS IN 2005, 2006, AND 2007?

LIST OF PARTIES

Petitioner Master Isidoro Rodriguez-Hazbun is a 15 and a half years-old citizen of the United States.

Respondent, The Judges of the Supreme Court of Virginia, Richmond, Virginia.

Respondent, The Judges of the Court of Appeals of Virginia, Richmond, Virginia.

Respondent, The Judges of the Fairfax County Circuit Court, Fairfax, Virginia.

Respondent, The Judges of the Fairfax County Juvenile & Domestic Relations Court, Fairfax, Virginia.

Respondent, The Judges of the United States Court of Appeals for the District of Columbia Circuit, Washington, D.C..

Respondent, U.S. District Court Judge Richard W. Roberts, Washington, D.C..

Respondent, The United States Department of State, The Office of Children Issues, Bureau of Consular Affairs, Washington, D.C..

Respondent, The National Center for Missing and Exploited Children, Alexandria, Virginia.

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STATEMENT OF JURISDICTION

The supervisory authority of this Court is invoked under 28 U.S.C. § 1651(a), Rule 20 of the Rules of this Court, Article 2 and 11 of the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980; and 42 U.S.C. § 11601(b)(4) and § 11603 of the International Child Abduction Remedies Act.

TREATY, FEDERAL STATUTES, and REGULATION INVOLVED

The Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 19 I.L.M. 1501, Introduction B–1

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STATEMENT OF THE CASE

Petitioner Master Isidoro Rodriguez-Hazbun ("Isidoro") is a fifteen and a half-year-old boy, who despite being a citizen of the United States (A-1), was forced from the United States to the Republic of Colombian on June 11, 2002, by the Hon. Judge T.S. Ellis III's, U.S. District Court E.D. VA, disregarding of Isidoro's father's fundamental rights as a citizen of the United State and the father's residual parental rights guaranteed under the Joint Custody Settlement Agreement entered into and unchanged since August 1, 1997 (A-2),[2] as well as disregarding Isidoro's fundamental

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[2]The Joint Custody Settlement Agreement (A–2) was entered between Isidoro's parents under the Republic of Colombia Civil Code Title XII, Article 253 and Article 264, *Legis*, ed. 2002, which consistent with VA Code § 20-124.01 assures both parents their residual right and responsibility for the care, control and

rights, disregarding Isidoro's preference as a mature 13-year-old boy capable of deciding that his "best interest" was to reside in the United States with his father, and disregarding Isidoro's right to be away form the dangers in the Republic of Colombia as a "zone of war" for U.S. citizens who are warned not to enter that country by the U.S. State Department–in short by the federal courts disregarding the exception to Chapter III of the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980 ("Treaty"),*Escaf v. Rodriguez*, 200 F.Supp. 2d 603 (E.D. Va. 2002, T.S. Ellis III, J.); affirmed in unpublished decision in *Hazbun v. Rodriguez*, 52 Fed. Appx. 204 (4th Cir. 2002), cert. denied, U.S. Supreme Court Docket No. 02-1268, March 3, 2003).

Since being shanghaied to the Republic of Colombia from the United States by the federal courts disregarding the exceptions under Chapter III of the Treaty, Isidoro has also been denied of the expedited securing of his rights under a Joint Custody Settlement Agreement to international access (hereinafter "visitation" as defined by 42 U.S.C. § 11603(7)) with his father in the United States mandated by Articles 2 (B--1), 11 (B--2), and Chapter IV (B--2) of the Treaty, 42 U.S.C. § 11601 (a)(4) (B--3), 51 Fed. Reg. 10,513 (1986) (B–5), and ¶2 & ¶3 of Resolution 293(A–10), by the use of unauthorized policies and practices to

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authority to make decisions concerning Isidoro, as well as for visitation. No modification or amendment were ever made to these parental rights–as well as Isidoro's rights of access with his father. (A-5)

not comply with their ministerial duties by the United States Department of State, The Office of Children Issues ("U.S. Central Authority"); and its contractor acting as an "instrumentality of government," the National Center for Missing and Exploited Children ("NCMEC").[3]

This noncompliance with the ministerial duties mandated by the Treaty and Congress by the U.S. Central Authority and NCMEC is in part based on at least three of their current unauthorized policies and practices which are taught to the judiciary, including: (i) disregarding 42 U.S.C. § 11603 grant of concurrent jurisdiction to State courts so to limit Treaty litigation to federal courts; (ii) disregarding the exception under the Treaty including fundamental rights of citizens of the United States exception, disregarding the "best interest" and preference of the child exception, and disregarding the "zone of war"; and, (iii) disregarding 42 U.S.C. § 11606(c) so to not promulgate regulations in the Code of Federal Regulations implementing Articles 2, 11, and Chapter IV of the Treaty, and 51 Fed. Reg. 10,513 (1986) (B–5), and so to thereby

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[3]The NCMEC is an "instrumentality of government" in accordance with the Cooperative Agreement with the U.S. Central Authority and the Department of Justice (A–24). The NCMEC has received over $100 million in grants and awards since 1999 to provide the administrative process in the United States for any expedited petition to secure international visitation rights pursuant to Article 2, Article 11, and Chapter IV of the Treaty and 42 U.S.C. § 11601 and § 11603. *See* House Concurrent Joint Resolution 293, May 23, 2000 ("Resolution 293")(A-7).

assume away the mandated judicial and ministerial duties to secure international visitation rights.

These unauthorized policies of the U.S. Central Authority and NCMEC are taught to Federal and State judges through publications, training, briefings, and judicial conferences. *See* U.S. Central Authority Website; *see also* Section 4.3, Judicial Training, page 26 Good Practice in Handling Hague Abduction Convention Return Applications (2002), by Prof. Nigel Lowe and Sarah Armstrong; *International Child Abduction Database (INCADAT)*, at http: www.incadat.com; *and "The Judges' Newsletter,"* Volume III Autumn 2001, published by Butterworths LexisNexis.

Because of these unauthorized policies and malicious acts of the U.S. Central Authority and the NCMEC, on January 27, 2003 Isidoro and his father filed an action for damages and to secure their rights of visitations by the issuance of a Writ of Mandamus to the U.S. Central Authority, and the NCMEC to compel their compliance with their ministerial duties to pursuant to Articles 2 (B--1), 11 (B--2), and Chapter IV (B--2) of the Treaty, 42 U.S.C. § 11601 (a)(4) (B--3), 51 Fed. Reg. 10,513 (1986) (B–5), and ¶2 & ¶3 Resolution 293(A–10), *Isidoro Rodriguez, father of minor son, Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children, et al.,* 03-CV-0102 (RWR) U.S. District Court for D.C.)(*"Isidoro I"*). However, in *Isidoro I* the Hon. Judge Richard Roberts ("Judge

Roberts") refused to act expeditiously as required by Articles 2 and 11 of the Treaty.[4]

Thus due to Judge Roberts acting outside of his jurisdiction by refusing to comply with Article 2 of the Treaty, a petition for an expedited writ of mandamus seeking compliance by the U.S. Cental Authority and the NCMEC with their ministerial duties under Chapter IV of the Treaty was filed in March 2003, *In re Isidoro Rodriguez,Esq., and Isidoro Rodriguez-Hazbun*, United States Court of Appeals with the District of Columbia, Docket No. 03-5092. But on April 17, 2003, the Court of Appeals disregarded the Complaint and motions filed in the District Court so to deny the petition--stating surreally that "the request must be brought before the district court in the first instance." (A–36).[5]

In response to the federal courts acting outside of their jurisdiction in *Isidoro I*, mandated by Articles 2 (B--1), 11 (B--2), and Chapter IV (B--2) of the Treaty, 42 U.S.C. § 11601 (b)(B)(4) (B--3), 51 Fed. Reg.

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[4]To date after the passage of 616 days from the filing of the Complaint in *Isidoro I*, Judge Roberts has not acted on any of the motions for expedited consideration, or the request for issuance of a statement for delay in conducting proceeding to secure visitation rights (A-28), despite the filing of a motion for judicial notice of the status of the NCMEC receipt of more than $100 million as an "instrumentality of government" (A–24), and motions for a FRCP Rule 16 Discovery Conference pursuant to the Article 2 and 11 of the Treaty (A-37).

[5]On October 14, 2003, this Court denied a Petition for Writ of Mandamus Record No. 03-301.

10,513 (1986) ¶ D (B–6), and ¶2 & ¶3 of Resolution 293(A–10), pursuant to the concurrent jurisdiction to adjudicate petitions under the Treaty, 42 U.S.C. § 11603 (B–4), so to permit his spending his 2003 Summer vacation with his father in the United States, Isidoro filed on June 11, 2003 a petition pursuant to the Treaty and ICARA, for the expedited securing of visitation rights by the Fairfax County Juvenile and Domestic Relations District Court of the Commonwealth of Virginia ("Fairfax J&D Court"), *Master Isidoro Rodriguez-Hazbun, Petitioner, v. National Center for Missing and Exploited Children and Amalin Hazbun Escaf*, Case No. JJ-347-050-01-01 (*"Isidoro II"*). This is the original action filed over three years ago by Isidoro on July 13, 2001, to modify the Joint Custody Settlement Agreement (A–2), to permit staying with his father in the United State. However because of the unauthorized policies and practices of the U.S. Central Authority and NCMEC the Fairfax J&D Court in violation of 42 U.S.C. § 11603(a)(B-4), stayed the State court trial scheduled for February 25, 2002, to defer to subsequently filed federal action with a trail date of April 25, 2002, when Judge Ellis III refusal to abstain, *Escaf vs. Rodriguez*, 191 F. Supp.2d 685(E.D. Va. 2002, T.S. Ellis III, J.).

On June 18, 2003, the Fairfax J&D Court again disregarded its concurrent jurisdiction and the legislative mandates of Articles 2 & 11 and Chapter IV of the Treaty and the provisions of ICARA (B-1 through B-6), as well as Resolution 293 (A-7), to issue a summary order denying Isidoro's petition seeking the expedited securing of visitation rights, and stayed further pro

ceeding "pending all proceedings U.S. District Court Action" (A-23).

An immediate appeal was filed with the Fairfax County Circuit Court ("Fairfax Chancery Court") to enforce rights under the Treaty and ICARA, *Master Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children and Amalin Hazbun-Escaf*, Fairfax County Circuit Court No. C-185125. However, six months later on December 4, 2003, the date of the scheduled trail the Fairfax Chancery Court refused to conduct either an expedited *de novo* proceeding on Isidoro's petition for the expedited securing of visitation rights or remand the issues under the Treaty and ICARA back to the Fairfax J&D Court, and issued a summary order from the bench dismissing Isidoro's appeal holding that despite the fact that Isidoro was denied his right of a visitation, there was no final order and it lacked jurisdiction (A-22).

Because these orders of Fairfax J&D Court and Fairfax Chancery Court were final orders or appealable interlocutory orders depriving Isidoro of his fundamental rights and rights under the Treaty and ICARA, four separate Notices of Appeal were filed with the Court of Appeals of Virginia beginning on August 3, 2003, as well as motions for expedited consideration pursuant to Articles 2 and 11 of the Treaty, *Master Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children and Amalin Hazbun-Escaf*, Court of Appeal of Virginia Record No. 2004-03-4; No. 2758-03-4; No. 0293-04-4; and No. 3247-03-4; Fairfax County Circuit Court No. C-185125.

On April 28, 2004, the Court of Appeals of Virginia summarily denied both the Motion for Expedited Consideration under Article 2 of the Treaty, and the Motion for Judicial Notice of Resolution 293. Then on July 6, 2004, the Court of Appeals of Virginia summarily affirmed the decisions of the lower courts' refusal to comply with the mandates of Article 2, 11, and Chapter IV of the Treaty, and stating in effect that although Isidoro has been deprived of his visitation rights in the United States mandated under the Treaty and ICARA–there was no final order (A-18).

Four Petitions for Appeal were filed with the Supreme Court of Virginia challenging the summary orders of the Court of Appeals of Virginia, the Fairfax Chancery Court, and the Fairfax J&D Court. Also filed were motions for expedited consideration and the issuance of a statement for delay in conducting expedited proceeding to secure Isidoro's visitation rights (A-11), under the Joint Custody Settlement Agreement pursuant to Article 2, 11, and Chapter IV of the Treaty, the provisions of ICARA, and Resolution 293, *Master Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children and Amalin Hazbun-Escaf*, Supreme Court of Virginia Record No. 041217; Record No. 041283; Record No. 041481; and, Record No. 041702.

During the litigation and appeal process in *Isidoro II* since July 13, 2001, it was discovered that the Courts of the Commonwealth of Virginia have not put in place procedures for the conducting expedited proceedings as mandated under Article 2 of the Treaty.

On August 18, 2004 without complying with the statutory mandated right to permit oral argument,[6] a panel of the Supreme Court of Virginia issued an order turning the extensive record in the four Petitions for Appeal on their heads by dismissing the appeals summarily holding that Isidoro's father and Attorney of Record–did not have standing.

On August 23, 2004, Isidoro filed four petitions for an expedited rehearing *en banc by* the Supreme Court of Virginia of the panel's decision dated August 18, 2004, based on the violation of Isidoro's right of due process, equal protection and access to the court to secure on an expedited base his right to visitation and access pursuant to Article 2 and Chapter IV of the Treaty, 42 U.S.C. § 11603 and § 11601(4) of ICARA, and the failure to comply with Isidoro's statutory mandated right to oral argument. On October 1, 2004, without comment as to rights under the Treaty, the four petitions for rehearing were denied.

To date, in both *Isidoro I* and *Isidoro II*, no consideration of Isidoro's rights under the Joint Custody Agreement (A–2), and rights under the Treaty and ICARA have been ever undertaken by the Federal Courts or the Courts of the Commonwealth of Virginia. Thus since his being shanghaied on June 11, 2002, Isidoro irreparable harmed by the lost his fundamental

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[6]VSCR § 5-17(g), which reads in part that "[t]he appellant shall be entitled to state orally, in person . . . , to a panel of this Court the reasons why his petition for appeal shall be granted."[Emphasis added].

right of access to an impartial court as a citizen of the United States. Furthermore, since the filing of the Complaint in *Isidoro I* more than 616 days ago, Isidoro has been denied of his right to secure his visitation rights pursuant to Articles 2 (B--1), 11 (B--2), and Chapter IV (B--2) of the Treaty, 42 U.S.C. § 11601 (a)(4) (B--3), 51 Fed. Reg. 10,513 (1986) (B–5), and ¶2 & ¶3 Resolution 293(A–10), to his visitation rights in the United States with his father for the Summer of 2003, Christmas 2003, Summer 2004 vacations.

It is obvious from the record that the actions of the Federal and State judiciary have been based on the unauthorized policies and practices of the U.S. Central Authority and the NCMEC, and their permitting the U.S. Central Authority and the NCMEC repeated filings of misstatement of fact alleging that Isidoro's father has lost his retained residual parental rights irrespective of the Joint Custody Settlement Agreement (A-2), and obfuscation of the laws requiring an impartial judicial hearing before any amendment to the Joint Custody Settlement Agreement would be permitted to deprive Isidoro's father of these fundamental rights (A-5).

REASONS FOR GRANTING THE WRIT OF MANDAMUS AND PROHIBITION

A. Duties Are "Clear and Indisputable."

Article 1 of the Treaty states that its object is "to ensure that rights of visitations is effectively respected. Thus pursuant to 42 U.S.C. § 11601(4), 51 Fed. Reg. 10,513 (1986), Articles 21 and 29 of the Treaty, Joint

Custody Settlement Agreement and Colombian Civil and Legislative Code, *Legis*, ed. 2002, Title XII, Article 253--Isidoro has an indisputable right of visitation and access with his father.

Based on Article 1 (B-1) and Chapter IV of the Treaty (B-2), and the provisions of ICARA, as well on Resolution 293, since being shanghaied from the United States to the Republic of Colombia against his wishes as a 15 years-old, and fundamental rights as a citizen of the United States (A-1), pursuant to Article 2 of the Treaty Isidoro has sought expedited enforcement of his right to visit with his father in Virginia in accordance with the terms of the Joint Custody Settlement Agreement (A-2).

Chapter IV, Article 21 of the Treaty (B–2), specifically mandates that,

> The [U.S. Central Authority is] bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights are subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.
>
> The Cental Authority, either directly or through intermediaries, . . . initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing

respect for the conditions to which the exercise of these rights may be subject.

To implement this mandate, ICARA 42 U.S.C. § 11603(a), specifically states that the courts of Virginia and the United States, "shall have concurrent original jurisdiction of actions arising under the" Treaty and ICARA. Furthermore, Article 2 of the Treaty states that the Respondents, "shall take all appropriate measures to secure within their territories the implementation of the object" of the Treaty, and to that end "use the most expeditious procedures available."(B-1).

51 Fed. Reg. 10,514 (1986), Article 21, V, D., states that, "[i]n addition to or in lieu of invoking Article 21 to resolve visitation-related problems, under Article 18, 29 and 34 an aggrieved parent whose access rights have been violated may bypass the CA and the Convention and apply directly to the judicial authority of a Contracting State for relief under other applicable laws."

Thus the U.S. Central Authority, the NCMEC, the Courts Federal and Courts of Virginia in *Isidoro I* and *Isidoro II* have clear legal duties to be performed pursuant to Article 2 and Chapter IV of the Treaty, and these ministerial and judicial duties are "so plainly prescribed as to be free from doubt." *Naporoano Metal & Iron Co. v. Secy of Labor of the United States*, 529 F.3rd 537 (3rd Cir 1976).

However in response to Isidoro's various petitions to enforce visitation rights---the U.S. Central

Authority and the NCMEC have compounded their illegal policies and actions alleged on January 27, 2003 in *Isidoro I*, by making repeated intentional misstatements of fact and law as to their duty to secure international visitation rights in both *Isidoro I* and *Isidoro II*.[7]

Thus in *Isidoro I*, the federal courts (A-7, A-24, A-28, a-30, A-33, A-35, and A-37), and in *Isid II* the courts of the Commonwealth of Virginia (A-7, A-11, A-17, A-18, A-22, and A-23),[8] have acted outside of their

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[7]The record in *Isidoro I* and *Isidoro II* confirms that both the Federal and Virginia courts followed the policies and teachings of the U.S. Central Authority and the NCMEC's that the Treaty usurped the fundamental rights of U.S. citizens which pre-existed the Constitution and that are guaranteed by the by the 9th Amendment. Thus the record confirms that based on the U.S. Central Authority and the NCMEC policies the courts disregard the father/son relationship, and Isidoro's father's residual parental rights under the Joint Custody Settlement Agreement (A-2). Finally, the record confirms that the courts have implemented the U.S. Central Authority and the NCMEC policies to limit the use of the exceptions under the Treaty, i.e. the Hon. Judge T.S. Ellis III and the Fourth Circuit assuming the "zone of war" precedent under *Friedrich v. Friedrich*, 78 F.3rd 1060 (6th Cir. 1996), *see* "Grave Risk of Harm" under Article 13(b) of the Hague Convention on International Child Abduction: What Constitutes a War? " © 2002 National Legal Research, Group, Inc.; *see also,* Laura W. Morgan, "Grave Risk of Harm" Under Article 13(b) of the Hague Convention on International Child Abduction: What Constitutes a War?, 14 Divorce Litig. 133 (July 2002).

[8]

Although Isidoro's father is not a party in *Isidoro II*, because the order of the panel of the Supreme Courts of Virginia surreally dismissed Isidoro's appeal based on their summary statement

jurisdiction in refusing to expeditiously enforce the Isidoro's visitation rights under the Joint Custody Agreement pursuant to Article 2, Article 11, and Chapter IV of the Treaty, and Resolution 293.

Consequently Isidoro right to a writ of mandamus and prohibition is "clear and indisputable." *Kerr v. United States Dist. Ct.*, 426 U.S. 394, 96 S.Ct. 2119 (1976), since their issuances are necessary compel the performance of the judicial and ministerial duties, *Work v. United States ex Rives*, 267 U.S. 175, 45 S.Ct. 252 (1925), and necessary to correct the abuses of discretion in the policies and practices of the U.S. Central Authority and the NCMEC being taught and implemented to date by the Federal Courts and the Courts of the Commonwealth of Virginia in *Isidoro I* and *Isidoro II*, *Haneke v. Secy Health, Education & Welfare*, 535 F.2d 1291 (D.C. Cir. 1976).

Finally sovereign immunity nor judicial immunity bar an action seeking a writ of mandamus where as here it is alleged that the U.S. Central Authority, the NCMEC, and the Federal and State judges are

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unsupported by fact or law that Isidoro's father as Undersign counsel "has no authority to sue in his son's name." (A- 17), it is important to underscore that in accordance with the Joint Custody Agreement (A-2), Articles 8 & 21 of the Treaty, Civil Code of the Republic of Colombia, Isidoro's father has residual parental and visitation rights. Thus pursuant to Virginia Code § 20-124.1, Isidoro's father has the status of a "person with legitimate interest" who has standing to sue in Isidoro's name. *See Elk Grove Unified School District et al., Newdow et al.,* United States Supreme Court No. 02-1624, decided June 14, 2004.

acting unconstitutionally and in excess of their statutory authority in intentional violation of the Treaty and ICARA. *Washington Legal Found v. U.S. Sentencing Comm'n*, 89 F.3rd 897, 901-902 (D.C. Cir. 1996).

B. Isidoro Has No Alternative Relief Available

The record in both *Isidoro I* and *Isidoro II* discloses that there have been systematic and repeated official actions in support of the policy and practice of the U.S. Central Authority, the NCMEC, their employees, attorneys, outside counsels, and agents to disregard and frustrate meaningful access to the Federal and State court for impartial consideration of Isidoro's rights under the treaty.

In summary, in all of the proceedings the U.S. Central Authority and the NCMEC have intentionally made repeated misstatements of fact and law, and have repeatedly abused their status and political connections as Federal government entities with the courts in *Isidoro I* and *Isidoro II*, in violation of: (i) Article 2 and Chapter IV, Rights of Access, Articles 21 and 29, of the Treaty; (ii) 42 U.S.C. § 11603 of ICARA: (iii) Joint Resolution 293 dated May 23, 2000 (A-7); (iv) Isidoro's rights under the Joint Custody Agreement to visitations with his father; and, (v) Isidoro's fundamental rights in the father/son's relationship that predate the U.S. Constitution.

Because Isidoro has a clear right to the relief sought, *Carter v. Seamans*, 411 F.2d 767 (5th Cir. 1969), and over the past 616 days he has exhausted all

avenues in both Federal and State Court to secure the expedited compliance with the Treaty, there is no other adequate alternative remedy available to enforce his rights before the beginning of his 2004 Christmas Vacation on December 6, 2004-in 70 days, and expiration of the terms of the Treaty upon his becoming 16 years old on March 10, 2005, other than the issuance by this Court of a writ of mandamus and prohibition. *Holmes v. United States Bd. of Parole*, 541 F.2d 1243 (7th Cir. 1976), they must be grated.[9]

CONCLUSION

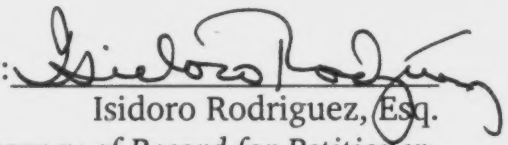
Since January 27, 2003, the Federal and State courts in *Isidoro I* and *Isidoro II*, have acted in collusion with the U.S. Central Authority and the NCMEC to disregard their judicial and ministerial duties under the Treaty, the provisions of ICARA, and Resolution 293 (A-7, and for 616 days have refused to expeditiously secure Isidoro's right of visitations in the United States. Thus a writ of mandamus and prohibition must be

---

[9] The critical factor in consideration in determining the propriety of resort to a writ of mandamus is the fact that there is not alternative remedy. *Cartier v. Secretary of State*, 506 F.2d 191 (D.C. Cir. 1974); *see also Heckler v. Ringer*, 466 U.S. 602, 616 (1984)(mandamus "is intended to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief . . . ."); *Association of Am. Med. Colleges v. Califano*, 569 F.2d 101, 110 n. 80 (D.C. Cir. 1977)("[t]he writ generally is denied when alternative remedies are available"); *Simpson v. Reno*, 902 F.Supp. 254, 256-58 (D.D.C 1995), *aff'd* 1996 WL 56625 (D.C. Cir. 1996); *Public Citizen v. Kantor*, 864 F.Supp. 208, 212-14 (D.D.C. 1994).

issued to Respondent to secure immediately within 70 days, Isidoro's right of visitations with his father for his Christmas 2004 and his other Vacations in 2005, 2006, and 2007.

Respectfully submitted,

By: 

Isidoro Rodriguez, Esq.
Attorney of Record for Petitioner
Admission to the Bar of
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DEPARTMENT OF STATE FOREIGN SERVICE OF
THE UNITED STATES OF AMERICA

CERTIFICATE OF BIRTH ABROAD
of a Citizen of the United States of America

This is to certify that according to records on file in this Office ISIDORO RODRIGUEZ-HAZBUN *sex* MALE *was born at* BARRANQUILLA, COLOMBIA *on* MARCH 10, 1989 *Report of birth recorded on* June 20, 1989.

In Witness Whereof, I have hereunto subsribed my name and affixed the seal of the Consular Service of the United States at BARRANQUILLA *this* 20th *day of* June *1989.*

(Seal)

/s/_____
Lawrence J. Gumbiner
Vice Consul

HEARING BEFORE FIRST FAMILY COURT OF BARRANQUILLA, COLOMBIA
PROCESS: CUSTODY AND PERSONAL CARES
PLAINTIFF: AMALIN HAZBUN ESCAF
DEFENDANT: ISIDORO RODRIGUEZ CRUZ
MINOR: 1

In Barranquilla, on August first (1st) of Nineteen Ninety Seven (1997), during public hearing at the First Family Court, the Honorable Judge declares open the hearing in this process of CUSTODY AND PERSONAL CARES of AMALIN HAZBUN ESCAF vs. ISIDORO RODRIGUEZ CRUZ, on behalf of minor ISIDORO RODRIGUEZ HAZBUN. It is confirmed that both parties are present and their attorneys. At this stage of the hearing the Honorable Judge advice the parties to present an agreement or conciliation formula. Defendant Mr. ISIDORO RODRIGUEZ speaks and says: I propose the Joint Custody of my son ISIDORO RODRIGUEZ HAZBUN in the following manner: That the mother AMALIN EMILIA HAZBUN ESCAF have him her personal cares but both parents share the rights of correction, moral and intellectual education of our minor child. Regarding visitations I propose to pick up my son ISIDORO RODRIGUEZ HAZBUN every fifteen days at the end of school day on Friday for him to stay with me all that weekend, taking him back on Sunday at 7 pm to the house of his mother or on Monday if it is holiday, with his homework done and his complete luggage. During the week days, this is Monday through Friday, I will pick up my son ISIDORO to take him to classes with the additional teacher assigned, and will pick him up at the class and continue with him

until 7 pm, this when in that week it correspond to me his visitation spending the night with me, this is once a week. When there is no visitationspending night with me besides picking him up on the day of the above noted classes I will pick him up on the day he has football classes once a week until the same hour, that means that in that week there will be two visitation days on week days. I want to add that in the case that for any circumstances there is not football class or writing class with the teacher, he will be with me anyway two working days in the week and in the other week one working day and will spend the weekend with me. Vacations will be shared as follows: The child will spend one year Carnivals with a parent and Holy Week with the other, mid year vacation since are longer jointly parents agree (.....) fifteen days with the mother. The end of year vacation this year the first fifteen days will be with the father permitting that if the minor is still with him for December 31st spend that date with his mother and go back with him to finish the vacation and this situation of the end of year vacation will alternate annually keeping always the spirit of sharing one of the two special dates of December 24 and 31st of each year. No discussion fathers' day he will spend it with his father and mothers' day with his mother. Regarding birthday of the child ISIDORO we will celebrate it jointly the parents with our son, making it clear that next celebration will be made by me. Ms. AMALIN HAZBUN takes the word and states: I am totally in agreement with the formula offered by the defendant. The Honorable Judge takes the word to say. Since the parties have arrived to an agreement about the totality

of the litigation, being such agreement in accordance with the law, it is approved and this process finished. It is just confirmed that at the non-compliance with the agreed hereby it will be applied by express statement of num. 4 of art. 350 of the Minor Code the sanctions provided on article 72 ibidem. No costs in this process. It is signed by all those who have intervened. The parties wish to clarify that just for year 1988 the mother will have the minor during Carnivals as well as Holy Week.

The Judge:

s/_____

LUZ MYRIAM REYES CASAS, Judge

Plaintiff:

s/_____

AMALIN HAZBUN ESCAF

Defendant:

s/_____

ISIDORO RODRIGUEZ CRUZ

Attorney for Plaintiff

s/_____

LUZ MYRIAM SANCHEZ DE CARVAJAL

Attorney for Defendant

s/_____

MABEL CASTRO PALACIO

The Court Clerk

s/_____

ELVIA MAZA DE CANTILLO

s/_____

Serra Newman, Certified Translator, Lic. Ministry of Justice, Bogota Colombia, March 25, 1988-23/07/01

Ref No. 23.833(CUSTODY AND VISIT REGULATION) FIRST FAMILY COURT ROOM, BARRANQUILLA, COLOMBIA, August 26, 1997

Mrs. Mabel Castro-Palacio-Defendant's Attorney in the process for custody and visit regulations initiated by Mrs. Amalin Hazbun, against Mr. Isidoro Rodriguez Cruz, in favor of minor Isidoro Rodriguez Hazbun, requests this Court to add the present document to the record of the hearing attended on August 1st, 1997, raised with basis on the conciliation that the parties arrived at, in order to determine clearly and expressly, that the custody of the above mentioned minor will be shared by the parents, since this was the basic point for the conciliation.

The Court, in order to resolve the petition of the Defendant's Attorney, refers to the statement of the Defendant, which was literally written down and is hereby transcribed in its relevant portion, so that this Court may take the corresponding decision. Mr. Rodriguez-Cruz states in the aforementioned document: "That his mother Mrs. Amalin Hazbun Escaf keep him under her personal care but that both parents share the right for the education, and the moral and intellectual up-bringing of our son. As for the visits, I propose to take my son Isidoro Rodriguez-Hazbun on Fridays every fortnight at school's exit hour, in order to spend the weekend together, and to take him back to his mother on Sunday at seven p.m. or on Monday if it is a holiday, with his home work done, and with his complete luggage. On weekdays, that is, form Monday to Friday, I commit myself to take my son ISIDORO to

his additional lessons, then take him and stay with him until seven o'clock p.m., at weeks when he will spend the night over, this is to say, once a week. At weeks when he will not spend the night,apart from taking him from the above mentioned additional lessons, I will take him to his soccer lessons once a week until seven p.m., meaning that week there will be two visiting days on working days."

From the foregoing transaction, it is clearly observed that the mother of the minor Isidoro, retains the child's custody, and therefore there is no need to make any clarification thereto. It would be otherwise if Mrs. Amalin Emilia Hazbun-Escaf had not complied with the conciliation terms stated in the document alluded by Mrs. Mabel Castro, in which case strict compliance would be requested to the Court, and Mrs. Hazbun-Escaf penalized accordingly.

Notify and comply

s/_____

LUZ MYRIAM REYES CASAS, Judge

s/_____

Serra Newman, Certified Translator, Lic. Ministry of Justice, Bogota Colombia, March 25, 1988 (23/0701).

INTERNATIONAL ABDUCTION RESOLUTION PASSED BY HOUSE WASHINGTON, D.C., May 23, 2000

House Concurrent Resolution 293, introduced by Congressman Nick Lampson (D, Tx-9), Founder and Chairman of the Congressional Missing and Exploited Children's Caucus, was passed 416-0 by the House on May 23rd, 2000. The concurrent resolution, which urges signatories of the Hague Convention onthe Civil Aspects of International Child Abduction to uphold the agreement, was brought to the floor under suspension.

Resolution 293

Whereas the Department of State reports that at any given time there are 1,000 cases of American shildren either abducted from the United States or wrongfully retained in a foreign country;

Whereas many more cases of international child abductions are not reported to the Department of State;

Whereas the situation has worsened since 1993, when Congress estimated the number of American children abducted from the United States and wrongfully retained in foreign countries to be more than 10,000;

Whereas Congress has recognized the gravity of international child abduction in enacting the International Parental Kidnapping Crime Act of 1993 (18 U.S.C. § 1204), and the Parental Kidnaping

Prevention Act (28 U.S.C. § 1738a), and substantial reform and reporting requirements for the Department of State in the fiscal years 1998-1999 and 2000-2001 Foreign Relations Authorization Acts;

Whereas the United States became a contracting party in 1988 to the Hague Convention on the Civil Aspects of International Child Abduction (in this concurrent resolution referred to as the `Hague Convention') and adopted effective implementing legislation in the International Child Abduction Remedies Act (42 U.S.C. §§ 11601 *et seq.*);

Whereas the Hague Convention establishes mutual rights and duties between and among its contracting states to expedite the return of children to the state of their habitual residence, as well as to ensure the rights of custody and of access of the laws of one contracting state are effectively respected in the other contracting states, without consideration of the merits fo any underlying child custody dispute;

Whereas Article 13 of the Hague Convention provides a narrow exception to the requirement for prompt return of children, which exception releases the requested state from its obligation to return a child to the country of the child's habitual residence if it is established that there is a `grave risk' that the retrun would expose the child to `physical or psychological harm or otherwise place the child in an intolerable situation' or `if the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of [the child's] views';

Whereas the National Center for Missing and Exploited Children (NCMEC), the only institution of its kind, was established in the United States for the purpose of assisting parents in recovering their missing children;

Whereas Article 21 of the Hague Convention provides that the central authorities of all parties of the convention are obligated to cooperate with each other in order to promote the peaceful enjoyment of parental access rights and fulfillment of any conditions to which the exercise of such rights may be subject, and to remove as far as possible, all obstacles to the exercise of such rights;

Whereas some contracting states fail to order or enforce normal visitation rights of parents of abducted or wrongfully retained children who have not been returned under the terms of the Hague Convention; an

Whereas the routine invocation of the Article 13 exception, denial of parental visitation of children, and the failure by several contracting parties most notably Austria, Germany, Honduras, Mexico, and Sweden, to fully implement the Convention deprives the Hague Convention of the spirit of mutual confidence upon which its success depends: Now, therefore, be it Resolved by the House of Representative (the Senate concurring), That Congress urges--

1) all contracting parties to the Hague Convention, particularly European civil law countries that consistently violate the Hague Convention such as Austria, Germany, and Sweden, to comply fully with

both the letter and spirit of their international legal obligations under the Convention;

2) all contracting parties to the Hague Convention to ensure their compliance with the Hague Convention by enacting effective implementing legislation and educating their judicial and law enforcement authorities;

3) all contracting parties to the Hague Convention to honor their commitments and return abducted or wrongfully retained children to their place of habitual residence without reaching the merits of any underlying custody dispute and ensure parental access rights by removing obstacles to the exercise of such rights;

4) the Secretary of State to disseminate to all Federal and State courts the Department of State's annual report to Congress on the Hague Convention compliance and related matters; and

5) each contracting party to the Hague Convention to further educate its central authority and law enforcement authorities regarding the Hague Convention, the severity of the problem of international abduction, and the need for immediate action when a parent of an abducted child seeks their assistance.

COMMONWEALTH OF VIRGINIA
IN THE SUPREME COURT OF VIRGINIA

Master Isidoro Rodriguez-Hazbun

Petitioner-Appellant,

v. Sup. Ct. No. 041217

National Center for Missing and
Exploited Children, and Amalin Hazbun,

Respondents-Appellees.

_____ and_____

In re Master Isidoro Rodriguez-Hazbun,

Petitioner-Appellant,

Sup. Ct. No. 041283

_____ and_____

Master Isidoro Rodriguez-Hazbun

Petitioner-Appellant,

v. Sup. Ct. No. 041481

National Center for Missing and
Exploited Children, and
Amalin Hazbun Escaf,

Respondents-Appellees.

_____ and_____

Master Isidoro Rodriguez-Hazbun

Petitioner-Appellant,

v. Sup. Ct. No. 041702

Amalin Hazbun Escaf,

Respondent-Appellee.

On appeal from the Court of Appeal of Virginia
Record Nos. 2004-03-4; 2758-03-4;
029304-4; and, 3247-03-4
Fairfax County Circuit Court No. C-185125

PETITIONER'S REQUEST UNDER ARTICLES TWO (2) AND ELEVEN (11) FOR STATEMENT OF REASONS FOR THE DELAY
The Convention on the Civil Aspects of International Child Abduction, done at the Hague on 25 Oct 1980 ("Treaty")
International Child Abduction Remedies Act ("ICARA"), 42 U.S.C. 11601 *et seq*.

Petitioner-Appellant, Isidoro Rodriguez-Hazbun ("Isidoro") in accordance with Articles Two (2) and Eleven (11) of The Convention on the Civil Aspects of International Child Abduction, done at the Hague on

25 Oct 1980 ("Treaty") International Child Abduction Remedies Act ("ICARA"), 42 U.S.C. 11601 *et seq.*, hereby respectfully files this Request for a Statement of Reasons for Delay and failure of the Courts' of Virginia for over 14 months to process on an expedite basis Isidoro's application to secure his visitation rights to the United States to spend his vacations with his father in accordance with the Joint custody Agreement and his fundamental rights as a citizen of the United States–and which are now pending before the Supreme Court of Virginia in the above four (4) captioned Petitions for Appeal.

TREATY INVOLVED

Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No 11,670, 19 I.L.M. 1501, Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementing of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 11

The Judicial or administrative authorities of Contracting States shall expeditiously in proceeding for the return of children.

If the judicial . . . concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant . . ., shall have the right to request a statement of the reasons for the delay. . . .

FACTS

On June 11, 2002, against his wishes and fundamental rights as a citizen of the Untied States Isidoro was shanghaied from the United States on June 11, 2002, to the Republic of Colombia pursuant to an order of U.S. District Court of the Eastern District of Virginia, Judge T.S. Ellis III, *see Escaf vs. Rodriguez*, 191 F.Supp.2d 685 (E.D. Va. 2002), and *Escaf v. Rodriguez*, 200 F.Supp 2d 603 (E.D. Va. 2002).

Subsequently, the Hon. Judge Richard Roberts of the U.S. District Court of the District of Colombia has refused to act in any meaningful manner on Isidoro and his father's Complaint filed on January 27, 2003 to secure pursuant to Chapter IV of the Treaty on an expedited bases visitation rights, in an obvious attempt to deny access to the courts by avoiding the reaching of the merits of the case by the tolling of the Treaty when Isidoro becomes 16 years of age on March 10, 2005, *see Isidoro Rodriguez-Hazbun and Isidoro Rodriguez v. National Center for Missing and Exploited Children et al.*, DC DC 03-0120 (Roberts, J).

Based on the alleged above unlawful acts of the federal judiciary by acting outside of their jurisdiction Isidoro filed on June 11, 2003 a petition with the Commonwealth of Virginia Courts pursuant to their original concurrent jurisdiction seeking the expedited securing of Isidoro's right of access and visitation with his father in accordance with Virginia Code Ann. § 20.146.25 and § 146.35, Isidoro's rights under the Joint Custody Agreement dated August 1, 1997, Isidoro's rights under Article 2 and Chapter IV of the Hague Convention on the Civil Aspects of International Child Abduction Dated October 25, 1980,

T.I.A.A. No 11,670, 19 I.L.M. 1501, 42 U.S.C. § 11601 at ¶ (4), 51 Fed. Reg. 10,513 (1986), Isidoro's rights under the laws of the Republic of Colombia.

As a result of the lower courts of Virginia refusal to comply with the Treaty to secure on an expedited bases Isidoro's right of visitation, Petition for Appeal Case No. 041217 was filed on May 27, 2004; Petition for Appeal Case No. 041283 was filed on June 1, 2004; Petition for Appeal Case No. 04481 was filed on June 21, 2004; and, Petition for Appeal Case No. 041702 was filed on July 21, 2004;

DISCUSSION

Now as of this date more then fourteen (14) months have elapsed since the commencement of this action to secure on an expedited bases visitation rights in accordance with chapter IV of the Treaty. However, as of this date despite four (4) Petitions for Appeal filed based on rights under the Treaty the Honorable Supreme Court of Virginia has not reached any meaningful decision in these appeals irrespective of the evidence of the continuous malicious and negligent misstatement of fact and law by the U.S. Central Authority and NCMEC, regarding their ministerial duties under Chapter IV of the above cited Convention.

Thus pursuant to Articles 2 and 11 of the Treaty Isidoro request the Honorable Supreme Court of Virginia issue in accordance with Congressionally mandate a Statement of Reasons for the delay has deprived Isidoro of his fundamental rights to visitation and in his father/son relationship, rights under the U.S. Constitution, Constitution of Virginia, as well as under the Treaty.

CONCLUSION

In light of the interest of the Commonwealth of Virginia in the securing of the right of visitation as expressed by the legislature in Virginia Code § 20-146.25 and Virginia Code § 20-146.35, the rights under the Final Joint Custody Agreement, and the national and international importance of this matter based on the Treaty, and the best interest of Isidoro to have access and visitation with his father in the United States, it is respectfully requested that the Supreme Court explain the delay in consideration of the above appeals. Isidoro again respectfully requests that an expedited oral argument be scheduled as soon as possible.
Dated: August 7, 2004

Respectfully submitted,

/S/
Isidoro Rodriguez, Esquire
Virginia Bar No. 21573

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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 18th day of August, 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041702
Court of Appeals No3247-03-4

AMALIN HAZBUN ESCAF

Appellee.

From the Court of Appeals of Virginia

Upon consideration of the record and pleadings filed herein, the Court is of opinion that Isidoro Rodriguez lacks standing in this matter because he has no authority to sue in his son's name. Accordingly, the petition for appeal filed in this case is dismissed.

A Copy
Teste:
/s/
Clerk

UNPUBLISHED DECISION

COURT OF APPEALS OF VIRGINIA

Present: Judges Bumgardner, Kelsey and Senior Judge Hodges

ISIDORO RODRIGUEZ-HAZBUN

v. Record No. 3247-03-4

AMALIN HAZBUN ESCAF

MEMORANDUM OPINION* -
PER CURIAM
JULY 6, 2004

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY
Stanley P. Klein, Judge

(Isidoro Rodriguez; The Law Offices of Rodriguez & Sibley, on brief), for appellant.

No brief for appellee.

Appellant Isidoro Rodriguez-Hazbun appeals the December 4, 2003 order of the circuit court dismissing his appeal to that court. On appeal to this Court, he presents two questions:

I. Whether the Fairfax Chancery Court was in error in dismissing Isidoro's appeal from the June 18, 2003 order of the Fairfax J&D Court,

*Pursuant to Code § 17.1-413, this opinion is not designated for publication.

based on it[s] holding that there was no final order and it lacked jurisdiction under Va. Code §16.1-296.

II. Whether [the] Fairfax J&D Court and Chancery Court's proceedings have demonstrated a lack of impartiality, thereby violating Isidoro's right to due process and equal protection of the laws of Virginia, the Treaty [the Hague Convention Treaty on the Civil Aspects of International Child Abduction], and ICARA [the International Child Abduction Remedies Act].

Upon reviewing the record and opening brief, we conclude that this appeal is without merit.

Accordingly, we summarily affirm the decision of the circuit court. Rule 5A:27.

I.

On July 13, 2001, appellant instituted an action in the Fairfax County Juvenile and Domestic Relations District Court ("JDR Court") concerning his custody. Upon learning of this action, Amalin Hazbun Escaf, appellee, a citizen of Columbia, initiated a Hague Convention application in Columbia for his return to that country. The United States District Court for the Eastern District of Virginia, the United States Court of Appeals for the Fourth Circuit, and the Supreme Court of the United States entertained and determined the litigation arising from appellee's Hague Convention

application. Thereafter, appellant filed a petition for a writ of mandamus with the United States District Court for the District of Columbia. He was not successful, nor was he successful on his appeal of the district court's decision to the United States Court of Appeals for the District of Columbia. As of June 18, 2003, appellant was awaiting that court's decision of his request for rehearing en banc.

Meanwhile, on June 11, 2003, appellant filed in the JDR Court a "Motion to Compel Right of Access and Visitation Pursuant to Final Joint Custody Agreement Dated August 1, 1997." By order entered June 18, 2003, the JDR Court denied the motion, noting that it had stayed all proceedings pending the federal court litigation.

Appellant appealed the June 18, 2003 order to the circuit court. By order entered December 4, 2003, the circuit court dismissed the appeal. Appellant now appeals that decision to this Court.

II.

Code § 16.1-296(A) reads in pertinent part: "From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken within ten days from the entry of a final judgment, order or conviction." (Emphasis added.)

""A final order is one which disposes of the whole subject, gives all the relief contemplated,

provides with reasonable completeness for giving effect to the sentence, and leaves nothing to be done in the cause save to superintend ministerially the execution of the order.'"' Daniels v. Truck & Equip. Corp., 205 Va. 579, 585, 139 S.E.2d 31, 35 (1964) (citations omitted).

The JDR Court's June 18, 2003 order was not a final order. It merely determined that the court could not entertain appellant's motion because the state litigation had been stayed. Consequently, the circuit court lacked jurisdiction to entertain the appeal and did not err in dismissing the appeal.

Affirmed.

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY
ISIDORO RODRIGUEZ-HAZBUN

v. C-185125

AMALIN HAZBUN ESCAF

ORDER

This cause came on to be heard the 4th day of December, 2003 on Trial Scheduled.

Upon the matters presented to the Court at the hearing it is

ADJUDGED, ORDERED, And DECREED as follows: Appeal is dismissed without prejudice for the reasons stated by the court on the record.

Entered this 4th day of Dec, 2003.

Objection to Order
Seen:
Isidoro Rodriguez, Esq.
Counsel for Petitioner

_____/s/_____
Circuit Court Judge

ORDER Case No.: JJ341050-01-01
Commonwealth of Virginia
Fairfax County Juvenile and Domestic Relations District Court Master Isidoro Rodriguez-Hazbun v. Ms. Amalin Hazbun Escaf

THE FOLLOWING PARTIES WERE PRESENT:

Petitioner: [Isidoro Rodriguez-Hazbun]

Type of Case: Motion for Visitation

FINDING OF THE COURT: This Court stayed all proceeding pending U.S. District Court Action

IT IS ORDERED THAT: The Motion to enforce visitation is Denied.

CJ MAYFIELD

6-18-2003 /s/

JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASE NO. 03-CV-00120 RWR

RODRIGUEZ, father of RODRIGUEZ-HAZBUN

Plaintiffs,

v.

THE NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, *et al.*,

Defendants.

NOTICE OF FILING

COMES NOW Isidoro Rodriguez, Esq. ("Rodriguez"), to provide the Hon. Judge Richard Roberts with a copy of documents recently released by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention pursuant to Undersign Counsel's Freedom Information Act Request.

Said document confirms the awarding by that agency of the Government of the United States to the National Center for Missing and Exploited Children (hereinafter "NCMEC") of **$87,119, 910 USD for the period of February 01, 1998 to February 2, 2005**, for the NCMEC to act as an "instrumentality of

government."[1]

The above federal fund have been provided in part for the NCMEC to serve as the administrative starting processing point for the petitions to secure the expedited access and visitation of Plaintiff Isidoro Rodriguez-Hazbun with his father Isidoro Rodriguez, Esq., in the Untied States, in accordance with the Joint Custody Agreement which has been filed with the Hon. Richard Roberts over eighteen (18) months ago pursuant to Article 2 and Chapter IV of the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, ("Treaty"), the International Child Abduction Remedies Act, 42 U.S.C. § 11601 *et seq.*, ("ICARA"), and the Joint Resolution 296 of the House of Representative on the securing of visitation.

However to date both the Hon. Judge Roberts and the Hon. Judge T.S. Ellis III as well as the respective Courts of Appeal have demonstrated a lack of impartiality based on the repeated misstatements of facts and law by Defendants Defendant Office of Children's Issues, United States Department of State ("U.S. Central Authority"), and its contractor, Defendant National Center for Missing and Exploited Children ("NCMEC"), acting as an instrumentality of Federal Government. Furthermore said Defendants have been actively teaching both policy and practices to Federal judges, through publications, training,

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[1] To date the Defendant United States Department of State has refused to comply with the Freedom of Information Act Request, and thus has further compounded its refusal to comply with the law.

briefings, and judicial conferences, *see* Section 4.3, Judicial Training, page 26 Good Practice in Handling Hague Abduction Convention Return Applications (2002), by Prof. Nigel Lowe and Sarah Armstrong; *International Child Abduction Database (INCADAT)* http:www.incadat.com; *"The Judges' Newsletter"*, Volume III Autumn 2001, published by Butterworths LexisNexis.

A review of the material which Defendants U.S. Central Authority and NCMEC use to instruct Federal and State Judges on their interpretation and political policy of the Treaty clearly shows an intent to deny rights under the Treaty, ICARA, and the fundamental rights under the Constitution, including the : (i) concentration and limitation of the jurisdiction of Treaty litigation to federal courts, disregarding 42 U.S.C. § 11603; (ii) the emphasis to rarely apply the exceptions to an applications under the Treaty for return of a child to the habitual residence; (iii) to disregard any consideration of the "best interest" and preference of a child; (iv) to place the Treaty above the fundamental rights of citizens of the United States; and, (v) to disregard totally Article 2 and Chapter IV of the Treaty, so the U.S. Central Authority is not required to secure visitation rights.

The attach documents are filed in support of Rodriguez's long standing Constitutional challenge to Defendants U.S. Central Authority and the NCMEC, unlawful pattern and practice of intentional misstatements of fact and law made in the instant action so to avoid securing visitation and access rights under the Joint Custody Agreement pursuant to their

ministerial duties under the Cooperative Agreement, Treaty and ICARA.

In closing, the record to date shows that the Hon. Richard Roberts has acted outside of the mandates of Treaty, ICARA, and Joint Resolution for over 18 months in violation of the fundamental rights of Plaintiffs in their father/son relationship by refusing to act on either the Complaint or the Motions to mandate the expedited securing of visitation rights.

Thus the Undersign Counsel objects to this Court compounding the violations of the fundamental rights of the Plaintiffs by intentionally depriving Plaintiffs of their rights as citizens of the United States.

Dated: July 16, 2004

_____

Isidoro Rodriguez, Esquire
Virginia Bar No.: 21573

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBI

CASE NO. 03-CV-00120 RWR

RODRIGUEZ, father of RODRIGUEZ-HAZBUN

Plaintiffs,

v.

THE NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, *et al.*,

Defendants.

REQUEST FOR STATEMENT OF REASONS UNDER ARTICLES TWO (2) AND ELEVEN (11)-The Convention on the Civil Aspects of International Child Abduction, done at the Hague on 25 Oct 1980 ("Treaty"), International Child Abduction Remedies Act ("ICARA"), 42 U.S.C. 11601 *et seq*.

REQUEST FOR STATEMENT OF REASONS

An action was commenced in the United States District Court for the District of Columbia on January 27, 2003 before the Hon. Richard Roberts presiding, seeking in addition to damages under *Bivens* and the Federal Tort Claims Act, expedited issuance of a Writ to Mandamus to the United States Department of State

("U.S. Central Authority"), and its contractor acting as an "instrumentality of government, The National Center for Missing and Exploited Children ("NCMEC"),[2] to secure pursuant to Articles 2 and 11 of the Treaty as to Plaintiffs' rights of access and visitation in accordance with Chapter IV of the Treaty.

Now as of this date more then eighteen (18) months have elapsed since the commencement of this action. However, as of this date despite the repeated request the Hon. Richard Roberts has not reached any meaningful decision in this case irrespective of the evidence of the continuous malicious and negligent misstatement of fact and law by the U.S. Central Authority and NCMEC, regarding their ministerial duties under Chapter IV of the above cited Convention.

Thus pursuant to Articles 2 and 11 of the Treaty Undersign Counsel *Pro per* requests that the Hon. Richard Roberts of the United States District Court for the District of Columbia issue in accordance with Congressionally mandate a Statement of Reasons for his delay which has deprived Plaintiffs in this action of their fundamental rights in their father/son relationship, as well as their rights under the U.S. Constitution as well as under the above Convention of Access and Visitation.

Dated: July 25, 2004Isidoro Rodriguez, Esquire

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The NCMEC has received over $87 million dollars in federal funding since 1998, yet it has characterized itself as a "non-profit" with no responsibility to process Plaintiffs' petition under the Treaty.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASE NO. 03-CV-00120 RWR

RODRIGUEZ, father of RODRIGUEZ-HAZBUN

Plaintiffs,

v.

THE NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, *et al.*,

Defendants.

MOTION FOR RULE 16 CONFERENCE OF ISIDORO RODRIGUEZ, ESQ.

COMES NOW Isidoro Rodriguez, Esq. ("Rodriguez"), as Attorney *Pro per*, and pursuant to Rule 16, Fed. R. Civ. P, and Articles 2, 11 and Chapter IV of the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, ("Treaty"), the International Child Abduction Remedies Act, 42 U.S.C. § 11601 *et seq.*, ("ICARA"), and the Joint Resolution 296 of the House of Representative confirming Rodriguez's fundamental right to seek the expedited securing of visitations with his son, co-Plaintiff Isidoro Rodriguez-Hazbun, to request that this Court direct the attorneys for parties to appear before

it for a conference on or shortly thereafter September 13, 2004, upon Rodriguez's return to the Untied States from France so to (i) expedite disposition of the action pursuant to Article 2 and 11 of the Treaty and the provisions of ICARA, and (ii) to finally establish control of this case which was filed on January 27, 2003, and has languished before this Court for six hundred and eight days (608) in total disregard of the rights under Articles 2, 11 and Chapter IV of the Treaty and ICARA.

In summary, since the filing of the instant complaint more than 608 days ago, in all of the proceedings before this Court and the Courts of the Commonwealth of Virginia the attorneys for the National Center for Missing and Exploited Children *et al.*, have been permitted by the Courts to make intention misstatements of fact and law, and to thereby abused their status and political connections as representatives of Federal government entities so to "obstruct the lawful exercise of parental rights" that Rodriguez has under the Joint custody agreement dated August 1, 1997, as well as are in violation of: (i) Article 2 and Chapter IV, Rights of Access, Articles 21 and 29, of the Treaty; (ii) 42 U.S.C. § 11603 of ICARA: (iii) Congressional Resolution 293 dated May 23, 2000; (iv) Rodriguez's fundamental rights that predate the U.S. Constitution-- in violation of 18 U.S.C. Sec. 1204,[3]

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[3] 18 U.S.C. § 1204 - International parental kidnapping.

(a) Whoever. . . retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this

WHEREFORE, Rodriguez requests that this Court enter an order directing the attorneys for the parties to appear before it for a conference on or shortly after September 13, 2004 and further relief as the Court deems equitable and just.

Dated: August 30, 2004

Isidoro Rodriguez, Esquire
Virginia Bar No.: 21573

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title or imprisoned not more than 3 years, or both.

United States Court of Appeals 0for the District of Columbia Circuit
No-03-5092

Dated: July 1, 2003

In re Master Isidoro Rodriguez-Hazbun, fourteen-year-old son of Isidoro Rodriguez, Esq., and Isidoro Rodriguez, Esq. Father of Isidoro Rodriguez-Hazbun, a minor,

Petitioners

BEFORE: Ginsburg, Chief Judge, and Edwards and Randolph, Circuit Judges

ORDER

Upon consideration of petitioners' motion for expedited consideration of the petition for rehearing en banc, it is

ORDERED that the motion be dismissed as moot.

Per Curiam

For the Court
Mark J. Lagger, Clerk
By s/_____
Michael c. McGrail
Deputy Clerk

United States Court of Appeals for the District of Columbia Circuit
No-03-5092

Dated: July 1, 2003

In re Master Isidoro Rodriguez-Hazbun, fourteen-year-old son of Isidoro Rodriguez, Esq., and Isidoro Rodriguez, Esq. Father of Isidoro Rodriguez-Hazbun, a minor,

Petitioners

BEFORE: Ginsburg, Chief Judge, and Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland, and Roberts, Circuit Judges

ORDER

Upon consideration of petitioners' petition for rehearing en banc, it is

ORDERED that the petition be denied.

Per Curiam

For the Court
Mark J. Lagger, Clerk
By s/_____
Michael c. McGrail
Deputy Clerk

United States Court of Appeals for the District of Columbia Circuit
No-03-5092

Dated: May 28, 2003

In re Master Isidoro Rodriguez-Hazbun, fourteen-year-old son of Isidoro Rodriguez, Esq., and Isidoro Rodriguez, Esq. Father of Isidoro Rodriguez-Hazbun, a minor,

Petitioners

BEFORE: Ginsburg, Chief Judge, and Edwards and Randolph, Circuit Judges

ORDER

Upon consideration of the petition for a writ of mandamus, and the motion to expedite consideration of the petition, it is

ORDERED that the petition be denied. To the extent petitioner seeks a writ of mandamus to be issued by the district court, petitioner has not demonstrated a "clear and indisputable" right to relief and that "no other adequate means to attain the relief" exist. In re Sealed Case No. 98-3077, 151 F.3d 1059, 1062-63 & n. 4 (d.C. Cir. 1998)(citations omitted). In deed, to attain the relief he seeks from the district court to amend the docket to reflect pending civil action, petitioner may move the district court to amend the docket to reflect that such action was brought my

petitioner both individually and on behalf of his minor son. To the extent petitioner seeks a writ of mandamus to be issued to the Department of State, it is well-settled that such request be brought before the district court in the firstinstance. See Telecommunication Research & Action Ctr. v. FCC, 750 F.2d 70, 77 (D.C. Cir. 1984). It is

FURTHER ORDERED that the motion to expedite be dismissed as moot.

Per Curiam
S/_____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASE NO. 03-CV-00120 RWR

RODRIGUEZ, father of RODRIGUEZ-HAZBUN

Plaintiffs,

v.

THE NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, *et al.*,

Defendants.

SECOND NOTICE PURSUANT TO 28 U.S.C. § 2403(a), OF CONSTITUTIONAL CHALLENGE TO THE ON GOING PATTERN AND PRACTICE OF VIOLATIONS OF FIRST, FIFTH, AND NINTH AMENDMENTS, AND FUNDAMENTAL RIGHTS OF ISIDORO RODRIGUEZ, ESQ. BY DEFENDANT U.S. CENTRAL AUTHORITY AND ITS CONTRACTOR, DEFENDANT NCMEC, ACTING AS AN INSTRUMENTALITY OF FEDERAL GOVERNMENT

COMES NOW Isidoro Rodriguez, Esq., to provide notice to this Court pursuant to 28 U.S.C. 2403(a), and a copy to this Court of Isidoro Rodriguez Hazbun Opening Brief filed with the Court of Appeals of Virginia in *Isidoro Rodriguez-Hazbun v. Amalin*

Hazbun Escaf, Record No. 3247-03-4, on February 20, 2004; and served by hand delivery on February 23, 2004, on Defendant National Center for Missing and Exploited Children ("NCMEC"), and Defendant Mr. Patrick Stiehm, as attorney of record for Ms. Amalin Hazbun Escaf.

This appeal in the Court of Appeals of Virginia, filed pursuant to VA Code § 20-124.29 (*Uniform Child Custody Jurisdiction and Enforcement Act*), Chapter IV, Articles 2 and 21 of the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, ("Treaty"), and the International Child Abduction Remedies Act, 42 U.S.C. § 11601 *et seq.*, ("ICARA"), is related because it too seeks expedited consideration to secure Isidoro Rodriguez-Hazbun's fundamental rights as a citizen of the United States to return to visit his father in the United States, after having been shanghaied by judicial fiat on June 11, 2002 to the Republic of Colombia.

As argued in the attach brief to the Court of Appeals of Virginia, and relevant in the instant action, based on this Court's inaction since filing its filing January 27, 2003, i.e. this Court has failed to act in any meaningful manner and has disregarded undersign counsel's fundamental rights to protect his Son, as well as obtained from compelling the Defendants Office of Children's Issues, United States Department of State ("U.S. Central Authority"), and the NCMEC to comply with their ministerial duties under ICARA and Article 2 and 21 of the Treaty to secure visitation rights on an expedited bases.

Therefore it is apparent based on the record that both the Virginia State action and the instant federal action, the
judicial branch in both have demonstrated a lack of impartiality based on the Defendants U.S. Central Authority and the NCMEC's policy and practices which are distributed and taught to all judges, through publications, training, briefings, and judicial conferences. Defendant U.S. Central Authority and NCMEC instruct Federal and State Judges on their interpretation and political policy of the Treaty, which is to: (I) concentrate and limit the jurisdiction of Treaty litigation to federal courts, disregarding 42 U.S.C. § 11603; (ii) to rarely apply the exceptions to an applications under the Treaty for return of a child to the habitual residence; (iii) to disregard any consideration of the "best interest" and preference of a child; (iv) to place the Treaty above the fundamental rights of citizens of the United States; and, (v) to disregard Article 21 of the Treaty, so the U.S. Central Authority is not required to secure visitation rights. Section 4.3. Judicial Training, page 26 Good Practice in Handling Hague Abduction Convention Return Applications (2002), by Prof. Nigel Lowe and Sarah Armstrong; *International Child Abduction Database (INCADAT)* http:www.incadat.com; *"The Judges' Newsletter"*, Volume III Autumn 2001, published by Butterworths LexisNexis.

Based on the above policy and practices pursuant to 28 U.S.C. 2403(a), this Court will please certify to the Office of the United States Attorney General undersign Constitutional challenge to the

pattern and practice of using the Hague Convention on the Civil Aspects of International Child Abduction, on 25 October 1980 ("Hague Convention") and the International Child Abduction Remedies Act, 42 U.S.C. 11601 et seq. ("ICARA"), to deprive citizens of the United States of their fundamental rights.

This Court will please certify to the Office of the United States Attorney General that the constitutionality of Hague Convention on the Civil Aspects of International Child Abduction, on 25 October 1980 ("Hague Convention") and the International Child Abduction Remedies Act, 42 U.S.C. 11601 et seq. ("ICARA"), is challenged based on the pattern and practice as applied to first shanghai Isidoro to the Republic of Colombia; and second to deny since January 27, 2003, the securing of access and visitation to deprive, thus these Acts of Congress affecting the public interest are herein drawn into question.

Dated: February 25, 2003

Isidoro Rodriguez, Esquire
Virginia Bar No.: 21573

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TREATY, FEDERAL STATUTES, and REGULATION INVOLVED

The Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No 11,670, 19 I.L.M. 1501

The State signatory to the present Convention, Firmly convinced that the interest of children are of paramount importance in matters relating to their custody, Desiring to . . . secure protection for rights of access, Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions-

Article 1

The object of the present Convention are-. . . . b) to ensure that rights . . . of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting State shall take all appropriate measures to secure within their territories the implementation of the object of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 5

For the purpose of this Convention-. . . . b)"right of access" shall include the right to take a child for a limited period of time to a place other then the child's habitual residence.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously for the return of children. . . .

Chapter IV–Right of Access

Article 21

An application to make arrangement for organizing or, securing the effective exercise of the rights of access may be presented to the Central Authority of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights are subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

Chapter V- General Provisions

Article 29

This Convention shall not preclude any person, . . . who claims there has been a breach of . . . access within the meaning of . . . Article 21 from applying directly to the judicial or administrative authorities of

a Contracting State, whether or not under the provisions of this Convention.

The International Child Abduction Remedies Act
42 U.S.C. § 11601
(a) Findings
The Congress makes the following findings:

. . . .

(4) The Convention on the Civil Aspects of International Child Abduction, . . . establishes legal rights and procedures for the prompt . . . securing the exercise of visitation rights. . . .

(b) Declarations
The Congress makes the following declarations:

(1) It is the purpose of this chapter to establish procedures for the implementation of the Convention in the United States.

(2) The provisions of this chapter are in addition to and not in lieu of the provisions of the Convention.

(3) In enacting this chapter the Congress recognizes-

(A) the international character of the Convention; and

(B) the need for uniform international interpretation of the Convention.

(4) The Convention and this chapter empower courts of the United States to determine under the Convention and not the merits of any underlying child custody claims.

The Convention and this chapter empower courts in the United States to determine rights under

the Convention and not the merits of any underlying child custody claims.

42 U.S.C. § 11602. Definitions
For the purpose of this chapter-
(1) the term "applicant" means any person who, . . . , files an application . . . for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention.
(4) the term "petitioner" means any person who, in accordance with this chapter, files a petition in court seeking the relief under the Convention;
(5) the term "person" includes any individual, institution, or other legal entity or body;
(6) the term "respondent" means any person against whose interests a petition is filed in court, accordance with this chapter, which seeks relief under the Convention;
(7) the term "rights of access" means visitation rights.

42 U.S.C. § 11603
(a) Jurisdiction of courts

The courts of the States and the United States district courts shall have concurrent original jurisdiction or actions arising under the Convention.
(b) Petitions

Any person seeking to initiate judicial proceedings under the Convention . . . for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of

such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.

. . . .

(d) Determination of case

The court in which an action is brought under subsection (b) of this section shall decide the case in accordance with the Convention .

(e) Burden of proof

(1) a petitioner in an action brought under subsection (b) of this section shall establish by a preponderance of the evidence-

. . . .

((B) in the case of an action for arrangements for organizing or securing the effective exercise of rights of access, that the petitioner has such rights.

42 U.S.C. § 11605. Admissibility of documents

With respect to any application to the United States Central Authority, or any petition to a court under section 11603 of this title, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

Department of State, 51 Fed. Reg. 10,513 (1986), V. Access Rights-Article 21.

C. Procedure for Obtaining Relief

Procedurally Article 21 authorizes a person complaining of, or seeking to prevent a breach of access rights to apply to the CA of a Contracting State in the same way as a person seeking return of the child. . . .

Once the CA receives such application, it is to take all appropriate measures pursuant to Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights are subject. . . .

D. Alternative Remedies

In addition to or in lieu of invoking Article 21 to resolve visitation-related problems, under Article 18, 29 and 34 an aggrieved parent whose access rights have been violated may bypass the CA and the Convention and apply directly to the judicial authority of a Contracting State for relief under other applicable laws.